

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

### for February 18<sup>th</sup> PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #04001 Amendment to Impact Fee Ordinance

**PROPOSAL:** Three amendments are proposed in order to establish a system for checking income and processing reimbursement of impact fees for low and moderate income owner-occupied housing.

**CONCLUSION:** The proposed amendments to the impact fee ordinance are in conformance with the goals of the Comprehensive Plan. The amendments will aid in the processing of low and moderate income fee reimbursements.

<b><u>RECOMMENDATION:</u></b>	Approval
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### **LEGAL DESCRIPTION:**

Amendments to the Zoning Code Chapter 27.82 on Impact Fees – to change the following:

- A. Section 27.82.040 to revise the definition of Low-Income Owner-Occupied Housing;
- B. Section 27.82.060 to add eligibility criteria for Low-Income Owner-Occupied Housing exemptions from Impact Fees and amend the processing deadline; and
- C. Section 27.82.080 to modify the provisions regarding approval of Owner-Occupied Low-Income Housing exemption and reimbursement of impact fees paid;

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

These proposals are in conformance with the new 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

Guiding Principles for Financing Urban Infrastructure

**A Balanced Approach:** The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area.

**Develop a Fair & Predictable System:** Distribute infrastructure costs fairly among all property owners who benefit from the improvements. The goal of the financing system is that costs should be known in advance of development.

**Minimize Impact on Affordable Housing:** Infrastructure financing should not increase the cost of affordable housing in Lincoln and the City should encourage retention of affordable new housing in existing neighborhoods. (Pages F 160 -161)

Establish an impact fee at time of building permit for road improvement costs in developing areas. Fees should not be at full capital recovery cost for residential uses. Large traffic generators, like commercial and industrial businesses, will pay a majority of the costs due to their traffic impact. Some mechanism should be employed so that the road impact fee does not impact affordable housing.” (Page F 162)

#### **ANALYSIS:**

1. At the time the impact fee ordinance was adopted in January 2003, it was noted that as the impact fee system was implemented, there may be some housekeeping matters to bring forward at a later date.
2. In December 2003 the City Council approved Change of Zone #3399 which included several minor modifications to the Impact Fee ordinance, including one change to the processing of low and moderate income housing reimbursements. At the time of the public hearing before the Planning Commission in October 2003, the Realtor's Association noted some areas in the processing of low and moderate income reimbursements that they thought should be addressed. These changes have been reviewed and worked out over the past few months.
3. The proposed amendments in this change of zone were reviewed by the Realtor's Association of Lincoln, Home Builders Association of Lincoln, Neighborhoods Inc. and several others who work with low and moderate income housing. This item is scheduled to be presented to the Mayor's Neighborhood Roundtable on February 12<sup>th</sup>.
4. The change in Section 27.82.040, Definitions, is to remove the requirement that Low Income Owner Occupied housing be subject to “local, state or federal regulations.” This provision was included in the original ordinance so that staff would not necessarily have to review each application to determine if the person met the income thresholds. It was thought that by requiring an applicant be in a “local, state or federal” low income housing program that this would eliminate duplication and speed the processing time. However, this was found to not be the case. Many programs will not share information or their income criteria vary. Thus, it was determined that the City would have to eliminate this provision.

5. By eliminating the participation in other programs, this means the City will need to determine the household's income and establish some program limits. These amendments are done in Section 27.82.060 (a) (6). These amendments to Section 27.82.060 (a) (6) do the following:
  - Part (i) is a new provision that "the housing has an initial purchase price that does not exceed the FHA mortgage limit for the Lincoln Area as determined by the United States Department of Housing and Urban Development (HUD)." Currently this will equate to \$160,176.00 for a single family house. The purchase price will be verified using the purchase contract. The limit is included to ensure the reimbursement program is not abused and is consistent with limits of federal low and moderate income housing programs.
  - Part (ii) requires that the person have a taxable income less than 80% of median income – which is the definition of moderate income. The City is using "taxable" rather than gross income, similar to the Urban Development Dept., because it will be easier to use tax returns to verify income.
  - Part (iii) establishes that a person may only receive this reimbursement once in a five year period. Section 27.82.080 (c) is being amended to provide that the reimbursement goes to the home buyer. Thus, the five year provision was added to avoid abuse of the reimbursement, while still allowing a low income builder to apply for the reimbursement which each new home. The once in five year provision is for the buyer, not the builder.
6. As mentioned earlier, the last amendment is to Section 27.82.080 (c), provides that reimbursement must be applied for within 10 days of closing on the house, rather than at time of occupancy and that the reimbursement will go to the home buyer.

Prepared by:

Stephen Henrichsen, AICP  
Principal Planner

February 6, 2004

**APPLICANTS:**

The Directors of Planning and Public Works & Utilities Departments

**CONTACTS:**

Stephen Henrichsen  
Planning Department  
555 S. 10<sup>th</sup> Street  
Lincoln, Ne 68508  
Ph# 441-6374

Michaela Hansen  
Public Works & Utilities Department  
555 S. 10<sup>th</sup> Street  
Lincoln, Ne 68508  
Ph# 441-7559

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**PROPOSED AMENDMENTS TO IMPACT FEE ORDINANCE**

A. "Section 6. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.060 to read as follows:

**27.82.040 Definitions.**

**Income Area, Low.** An area where 50% or more of the households within a census block make 60% or less of the median gross income adjusted for household size.

**Income Area, Moderate.** An area where 50% or more of the households within a census block make 80% or less of the median gross income adjusted for household size.

**Low-Income Owner-Occupied Housing.** An owner-occupied unit, ~~under local, state, or federal regulations,~~ which is sold to a household whose income is 80% or less of the area median ~~gross taxable~~ income adjusted for household size.

**Low Income Rental Housing.** A tenant-occupied unit which is rented to a household whose income is 80% or less of the median gross income adjusted for household size and which is rent restricted under local, state or federal regulations, to households whose income is 80% or less of the median gross income adjusted for size, and which restrictions through means of a land use restriction agreement or similar legal document runs with the property for a period of at least fifteen years.

**27.82.060 Exemptions From Impact Fees. {Reflects amendment to Section (a)}**

(a) Exemptions From All Impact Fees. The following types of development shall be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

(1) Replacement of a destroyed or partially destroyed residential building or structure with a new building or structure of the same use, and with the same number of residential units, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

1 (4) Room additions, remodeling, rehabilitation or other improvements to an existing  
2 structure, provided that there is no increase in the number of dwelling units for residential use or in  
3 the amount of gross square footage for nonresidential use.

4 (5) Construction pursuant to a building permit based upon a complete application  
5 filed with the City prior to June 2, 2003, provided the construction proceeds according to the terms  
6 of the building permit. If said building permit application expires, application for a new building permit  
7 shall be treated the same as a new development. A building permit application shall not be deemed  
8 to be complete until the application, together with all required attachments, information, or other  
9 accompanying documents, are filed with the City.

10 (6) Low Income Owner-Occupied Housing: provided that:

11 (i) The housing has an initial purchase price that does not exceed the FHA  
12 mortgage limit for the Lincoln Area as determined by the United States Department of Housing and  
13 Urban Development (HUD):

14 (ii) The housing is the principal residence of an owner whose household  
15 has an income which is 80% or less of the area median taxable income adjusted for household size;  
16 and

17 (iii) Neither the owner nor any member of the owner's household whose  
18 combined income is 80% or less of the area median taxable income adjusted for household size has  
19 purchased housing which qualified for a Low-Income Owner-Occupied Housing exemption within the  
20 immediately preceding five years.

21  
22 (†) An Owner-Occupied unit which is sold to a household whose income is 60% or less  
23 of the area median gross income adjusted for a household size shall be entitled to a 100% exemption  
24 from all Impact Fees.

25 (††) An Owner-Occupied unit which is sold to a household whose income is more than 60%  
26 but is 80% or less of the area median gross income adjusted for a household size shall be entitled to  
27 a 50% exemption from all Impact Fees.

28 (7) Low Income Rental Housing located outside of a low or moderate income area.

29 (i) A Tenant-Occupied unit which is restricted to rental to a household  
30 whose income is 60% or less of the area medium gross income adjusted for household size shall be  
31 entitled to a 100% exemption from all Impact Fees.

32 (ii) A Tenant-Occupied unit which is restricted to rental to a household  
33 whose income is 80% or less of the area medium gross income adjusted for a household size shall  
34 be entitled to a 50% exemption from all Impact Fees.

35 (8) Development or construction by any governmental entity for which the  
36 governmental entity has the statutory power of eminent domain shall not pay any impact fees since  
37 these entities are exempt from local zoning.

38 (9) Development or construction by the Housing Authority of the City of Lincoln  
39 pursuant to the Nebraska Housing Agency Act.

**27.82.060 Exemptions From Impact Fees. {Reflects amendment to Section (c)}**

(c) Request for Exemption Required. If a permit is required for the proposed development, any such claim for exemption must be made no later than the date of the application for the permit for the proposed development except that a claim of exemption for Low-Income Owner-Occupied Housing must be made no later than ~~60~~ ten days following ~~the date the housing is first occupied~~ execution of the purchase contract. If the issuance of a permit is not required for the development, then any such claim for exemption must be made no later than the occurrence of any one of the following events, whichever occurs first:

- (1) Completion of any connection to the City's water and wastewater systems; or
- (2) The date when any part of the development opens for business or goes into use.

Any claim for exemption not made at or before that time provided above shall be deemed waived.

**27.82.080 Refunds of Impact Fees Paid.**

(a) Passage of Time. Any monies in any impact fee account that have not been spent or encumbered within eight years after the date on which such fee was paid shall, upon application to the Impact Fee Administrator by the fee payor, be returned to such person with interest since the date of payment at the rate earned by the City on the fees. Fees shall be deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within six months of the end of the eight-year period from the date on which the unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at the address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor shall be required to submit an application for such refund within twelve months after the expiration of such eight-year period. Any monies in an impact fee account for which no application for a refund has been timely made shall be retained by the City and expended on the type of Impact Fee Facilities reflected in the title of the account without further limitation as to time of expenditure.

(b) Expiration of Permit. If a person has paid an impact fee required by this ordinance and has obtained a building permit or any other permit for a development or extensions thereto, and the permit or extension for which the fee was paid later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then such fee payor shall be entitled to a refund of the fee paid, with interest. In order to be eligible to receive such refund, such fee payor shall be required to submit an application for such refund within six months after the expiration of the permit or extension for which the fee was paid.

(c) Approval of Owner Occupied Low Income Housing Exemption. If, after an impact fee has been paid pursuant to this ordinance for a development which subsequently qualifies for an Owner Occupied Low Income Housing Exemption pursuant to Section 27.82.060(a)(6), then such ~~fee payor~~ purchaser shall be entitled to a reimbursement of the fee paid, without interest. In order to be eligible to receive such reimbursement, such ~~fee payor~~ purchaser shall be required to submit an

1 application for such exemption and reimbursement no later than 60 ten days following the date such  
2 ~~housing is first occupied~~ execution of the purchase contract.  
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